VF (C.B.)
Ontario. Employment Equity Act, 1993.

Employment Equity Act, 1992

EXPLANATORY NOTES

The purpose of the Bill is described in the Preamble.

Part I of the Act sets out the principles of employment equity (section 2).

Part II identifies Aboriginal people, people with disabilities, members of racial minorities and women as the designated groups, for the purposes of the Act (section 4). It provides that Parts III, IV and VI apply with respect to the following employers:

1. In the public sector, the Crown and broader public sector employers with ten or more employees.

2. In the private sector, employers with fifty or more employees.

Police forces are exempted (section 6).

Part III sets out the obligations imposed on employers under the Act (sections 8 to 18). Employers are required to prepare and implement an employment equity plan in accordance with prescribed requirements and to review and revise it periodically. Certain obligations are also imposed on bargaining agents (section 14).

The obligations imposed upon smaller public sector and private sector employers may be varied by regulation, in some cases to impose less stringent requirements (section 19).

The deadlines for preparing employment equity plans are set out (sections 20 and 21):

1. For the Ontario public service, twelve months after the date on which section 10 of the Act comes into force (called the "effective date").

2. For employers in the broader public sector with 500 or more employees, eighteen months after the effective date.

3. For private sector employers with 100 to 499 employees, twenty-four months after the effective date.

4. For private sector employers with 50 to 99 employees, thirty-six months after the effective date.

Part IV describes the mechanisms for enforcing the Act. The Employment Equity Commission can audit employers (section 22). It can also make orders which can be appealed to the Employment Equity Tribunal (section 24).

Applications can be made to the Tribunal by affected persons (sections 25 to 29). The powers of the Tribunal are set out (sections 24, 26 to 29 and 33).

Offences are set out and a penalty of not more than $50,000 is provided. (sections 35 to 38).

Part V establishes the Employment Equity Commission and the Employment Equity Tribunal.

Part VI imposes, as a term of all government contracts, the requirement that parties to a contract comply with Part III of the Act (section 49). It also sets out the regulation-making powers (section 50).

Part VII makes a consequential amendment to the Human Rights Code. An employment equity plan is deemed to be a special program that satisfies the requirements of the Code if certain requirements are met (section 51).

Provision is made for a review of the Act and regulations by a committee of the Legislature (section 52).

BILL 1992

An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women

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Preamble

The people of Ontario recognize that Aboriginal people, people with disabilities, members of racial minorities and women experience higher rates of unemployment than other people in Ontario. The people of Ontario also recognize that people in these groups experience more discrimination than other people in finding employment, in retaining employment and in being promoted. As a result, they are underrepresented in most areas of employment, especially in senior and management positions, and they are overrepresented in those areas of employment that provide low pay and little chance for advancement. The burden imposed on the people in these groups and on the communities in which they live is unacceptable.

The people of Ontario recognize that this lack of employment equity exists in both the public and private sectors of Ontario. It is caused by both systemic and intentional discrimination.

The people of Ontario have recognized in the Human Rights Code the inherent dignity and equal and inalienable rights of all members of the human family and have recognized those rights in respect of employment in such statutes as the Employment Standards Act and the Pay Equity Act. This Act extends the principles of those Acts and has as its object the amelioration of conditions in employment for Aboriginal people, people with disabilities, members of racial minorities and women in all workplaces in Ontario.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I
EMPLOYMENT EQUITY

Entitlement

1.-(1) All people are entitled to equal treatment in employment in accordance with the Human Rights Code.

Aboriginal people

(2) Aboriginal people are entitled to be considered for employment, hired, treated and promoted in accordance with employment equity principles.

People with disabilities, racial minorities and women

(3) People with disabilities, members of racial minorities and women are entitled to be considered for employment, hired, treated and promoted in accordance with employment equity principles.

Employment equity principles

2. The following principles of employment equity apply throughout Ontario:

1. Every Aboriginal person, every person with a disability, every member of a racial minority and every woman is entitled to be considered for employment, hired, treated and promoted free of barriers, including systemic and deliberate practices and policies, that discriminate against them as an Aboriginal person, as a person with a disability, as a member of a racial minority or as a woman.

2. Every employer's workforce, in all occupational categories and at all levels of employment, shall reflect the representation of Aboriginal people, people with disabilities, members of racial minorities and women in the community.

3. Every employer shall ensure that its recruitment, employment and promotion practices and policies are free of barriers, both systemic and deliberate, that discriminate against Aboriginal people, people with disabilities, members of racial minorities and women.

4. Every employer shall implement positive measures for recruiting, employing and promoting Aboriginal people, people with disabilities, members of racial minorities and women.

PART II
GENERAL

Interpretation

Definitions

3.-(1) In this Act,

"bargaining agent" means a trade union or other organization that, under any Act, has bargaining rights in respect of any unit of employees; ("agent négociateur")

"broader public sector" means the employers named in the Schedule to the Pay Equity Act and such other employers as may be named or described in the regulations but does not include the Ontario Public Service or such employers as may be named or described in the regulations; ("secteur parapublic")

"collective agreement" means an agreement in writing between an employer and a bargaining agent covering terms and conditions of employment; ("convention collective")

"effective date" means the date on which section 11 (employment equity plan) comes into force; ("date d'entrée en vigueur")

"employee" means an employee as determined in accordance with the common law and includes an individual who is primarily working for an employer on a commission basis and such others as are designated in the regulations; ("employé")

"employer" means an employer as determined in accordance with the common law and includes any entity, whether or not incorporated, that employs one or more individuals, a trustee and a receiver and a person who regularly engages the services of others on a fee-for-service or commission basis or such other basis as may be prescribed by the regulations, and in relation to construction projects includes an owner as defined in the Occupational Health and Safety Act; ("employeur")

"person" includes any entity, whether or not incorporated; ("personne")

"private sector employer" means an employer other than the Crown in right of Ontario or an employer in the broader public sector; ("employeur du secteur privé")

"regulations" means the regulations made under this Act. ("règlements")

Ontario Public Service

(2) For the purposes of this Act, the Crown in right of Ontario is considered to be the employer of the Ontario Public

Service which, for the purposes of this Act, consists of the people employed in the ministries of the Crown and in those agencies, boards and commissions of the Crown which employ public servants appointed under the Public Service Act.

Exception, other Crown agencies

(3) All other agencies, boards and commissions of the Crown are deemed to be separate employers and the people working for them are deemed to be their employees for the purposes of this Act.

Existing employers, number of employees

(4) For the purposes of Parts III and IV, the number of employees that an employer has on the effective date is deemed to be the greater of,

(a) the actual number of employees that the employer has on that date; and

(b) the greatest number of employees that the employer had at any time during the twelve-month period ending on that date.

Designated groups

4. Aboriginal people, people with disabilities, members of racial minorities and women constitute the designated groups for the purposes of this Act.

Legitimate requirements, handicaps, special employment

5.-(1) It is not a breach of this Act to give a preference in hiring or to deny employment to someone if the preference or denial is one that is permitted under the Human Rights Code by section 11 (constructive discrimination), section 17 (handicap) or clause 24(1)(a) or (b) (special employment).

Seniority rights

(2) For the purpose of this Act, employee seniority rights with respect to a layoff or recall to employment after a layoff that are acquired through a collective agreement or an established practice of an employer are deemed not to be barriers to the hiring, retention or promotion of members of the designated groups.

Application

Application of Parts III, IV and VI

6.-(1) Except as provided in this section, Parts III, IV and VI apply with respect to every employer in Ontario, including the Crown in right of Ontario.

Exception, small employers (broader public sector)
(2) Parts III, IV and VI do not apply with respect to an employer in the broader public sector that has fewer than ten employees unless, at any time after the effective date, the employer has ten employees or more.

Exception, small employers (private sector)
(3) Parts III, IV and VI do not apply with respect to a private sector employer that has fewer than fifty employees unless, at any time after the effective date, the employer has fifty employees or more.

Exception, police forces
(4) Parts III, IV and VI do not apply with respect to the Ontario Provincial Police or any other police force to which section 48 of the Police Services Act applies.

Crown bound
7. Parts III, IV and VI bind the Crown.

PART III
OBLIGATIONS

Obligations

Implementation and maintenance of employment equity
8.-(1) Every employer shall implement and maintain employment equity by recruiting, employing and promoting employees according to employment equity principles and in accordance with the employer's employment equity plan.

Role of supervisors, etc.
(2) Every employer shall ensure that the employer's staff who have responsibility for recruiting, supervising, evaluating or promoting employees are aware of, and observe, the requirements of this Act, the regulations and the employment equity plan that applies to the employer's workforce.

Same
(3) Every member of staff who has responsibility for recruiting, supervising, evaluating or promoting employees shall work in accordance with this Act, the regulations and the employment equity plan that applies to the employer's workforce.

Collection of workforce information
9.-(1) Every employer shall, in accordance with the regulations, conduct employment equity workforce surveys and collect other information to determine the extent to which members of the designated groups are employed in the employer's workforce.

Voluntary giving of information

(2) An employee has the right to decide whether to answer questions asked by an employer under subsection (1).

Review of employment policies

10. Every employer shall review the employer's employment policies and practices in accordance with the regulations. The purpose of the review is to identify and enable the employer to remove barriers to the hiring, retention and promotion of members of the designated groups, including terms and conditions of employment that adversely affect members of the designated groups.

Employment equity plan

11.-(1) Every employer shall prepare an employment equity plan in accordance with the regulations. It must provide for,

(a) the elimination of barriers identified under section 9;

(b) the implementation of positive measures with respect to the recruitment, retention and promotion of members of the designated groups;

(c) the implementation of measures to accommodate members of the designated groups in the employer's workforce;

(d) specific goals and timetables for the matters referred to in clauses (a) to (c);

(e) specific goals and timetables with respect to the composition of the employer's workforce; and

(f) such other matters as may be prescribed by the regulations.

Plan certificate

(2) After preparing the plan, the employer shall file with the Employment Equity Commission a certificate respecting the plan in a form approved by the Commission.

Copy of plan

(3) The Commission may require the employer to file a copy of the plan.

Implementation of plan

12. Every employer shall make all reasonable efforts to implement the employer's employment equity plan and to achieve the goals set out in the plan in accordance with the timetables set out in the plan.

Review and revision of plan

13.-(1) Every employer shall review and revise the employer's employment equity plan in accordance with the regulations.

Plan certificate

(2) After revising the plan, the employer shall file with the Employment Equity Commission a certificate respecting the revised plan in the form approved by the Commission.

Copy of plan

(3) The Commission may require the employer to file a copy of the revised plan.

Joint responsibilities, employer and bargaining agent

14.-(1) This section applies if any of an employer's employees are represented by a bargaining agent.

Same

(2) The employer and the bargaining agent shall jointly carry out the responsibilities described in sections 9, 10, 11 and 13 in respect of the part of the employer's workforce in which employees are represented by the bargaining agent.

More than one bargaining agent

(3) If the employees of the employer are represented by more than one bargaining agent, the employer and the bargaining agents shall establish a committee to co-ordinate the carrying out of their joint responsibilities. The committee shall be composed of one representative of the employer and one representative of each of the bargaining agents.

Good faith, etc.

(4) The joint responsibilities shall be carried out in good faith, separately from the normal collective bargaining process and in the manner prescribed by the regulations.

Amendment of collective agreement

(5) If the employer and a bargaining agent decide to do anything that conflicts with a collective agreement to which they are the parties, they shall amend the collective agreement to resolve the conflict.

Right to information

(6) The employer shall provide the bargaining agent with all information in the employer's possession or control that is necessary for the bargaining agent to participate effectively in carrying out their joint responsibilities, including the information prescribed by the regulations.

Consultation with employees

15. Every employer shall consult with the employer's employees in the manner prescribed by the regulations concerning

the development, implementation, review and revision of the employment equity plan.

Duty to inform

16.-(1) Every employer shall post in each of the employer's workplaces such information in respect of this Act and employment equity as may be prescribed by the regulations.

Same

(2) The information shall be posted in prominent places in the workplace in such a manner that it may be read by all employees in the workplace.

Employment equity records

17.-(1) Every employer shall establish and maintain employment equity records in respect of the employer's workforce.

Self-identification

(2) The employer shall keep in the employer's records concerning employees' membership in designated groups only the information, if any, that is provided by each employee about himself or herself.

Reports to the Commission

18. Every employer shall submit reports and other information to the Employment Equity Commission in accordance with the regulations concerning the composition of the employer's workforce and the development, implementation, review and revision of the employer's employment equity plans.

Exemptions

Regulations re Aboriginal workplaces

19.-(1) The Lieutenant Governor in Council may, by regulation, vary the application of any of the provisions of this Part and the regulations as they apply to Aboriginal workplaces. The regulation may define what constitutes an Aboriginal workplace.

Broader public sector employers

(2) The Lieutenant Governor in Council may, by regulation,

(a) exempt employers in the broader public sector that have fewer than fifty employees from any provision of this Part and the regulations;

(b) vary the application of any provision of this Part and the regulations to impose less stringent requirements on those employers.

Regulation ceases to apply
(3) A regulation made under subsection (2) ceases to apply to an employer who employs fifty or more individuals at any time after the effective date.

Private sector employers
(4) The Lieutenant Governor in Council may, by regulation,

(a) exempt private sector employers that have fewer than 100 employees from any provision of this Part and the regulations;

(b) vary the application of any provision of this Part and the regulations to impose less stringent requirements on those employers.

Regulation ceases to apply
(5) A regulation made under subsection (4) ceases to apply to an employer who employs 100 or more individuals at any time after the effective date.

Implementation

Time to comply, existing employers
20.-(1) An employer that has employees on the effective date shall comply with sections 9 (collection of workforce information), 10 (review of employment policies) and 11 (employment equity plan) within the period that ends on the following day:

1. For the Crown in right of Ontario, on the day that is twelve months after the effective date.

2. For an employer in the broader public sector with ten or more employees on the effective date, on the day that is eighteen months after the effective date.

3. For a private sector employer with 500 or more employees on the effective date, on the day that is eighteen months after the effective date.

4. For a private sector employer with 100 or more but fewer than 500 employees on the effective date, on the day that is twenty-four months after the effective date.

5. For a private sector employer with fifty or more but fewer than 100 employees on the effective date, on the day that is thirty-six months after the effective date.

New employers, broader public sector

(2) If an employer in the broader public sector does not exist or employs fewer than ten employees on the effective date but employs ten or more employees at any time after that, the employer shall comply with sections 9, 10 and 11 within the period that ends on the later of the following days:

1. The day that is twelve months after the employer first employs ten employees.

2. The day that is eighteen months after the effective date.

New private employers

(3) If a private sector employer does not exist or employs fewer than fifty employees on the effective date but employs fifty or more employees at any time after that, the employer shall comply with sections 9, 10 and 11 within the period that ends on the later of the following days:

1. The day that is twelve months after the employer first employs fifty employees.

2. The day that is thirty-six months after the effective date.

If exemption ceases to apply, broader public sector

21.-(1) If an exemption under subsection 19(2) ceases to apply to an employer in the broader public sector, the employer shall comply with sections 9, 10 and 11 within the period that ends on the later of the following days:

1. The day that is twelve months after the exemption ceases to apply to the employer.

2. The day that is eighteen months after the effective date.

Same, private sector employer

(2) If an exemption under subsection 19(4) ceases to apply to a private sector employer, the employer shall comply with sections 9, 10 and 11 within the period that ends on the later of the following days:

1. The day that is twelve months after the exemption ceases to apply to the employer.

2. The day that is twenty-four months after the effective date.

PART IV
ENFORCEMENT

Audit and Enforcement by the Commission

Commission audit

22.-(1) The Employment Equity Commission may conduct an audit of an employer to determine whether the employer is complying with Part III.

Audit powers

(2) In the course of an audit, an employee of the Commission,

(a) may enter any place at any reasonable time;

(b) may request the production for inspection of documents or things that may be relevant to the audit;

(c) upon giving a receipt therefor, may remove from a place documents or things produced under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them; and

(d) may question a person on matters that are or may be relevant to the audit subject to the person's right to have counsel or some other representative present during the examination.

Identification

(3) When exercising a power of entry, the employee shall produce identification and evidence of his or her employment with the Commission if requested to do so by the owner or occupier.

Restriction on power of entry: dwellings

(4) The employee shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (6).

Warrant for search

(5) If a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an audit, the justice of the peace may issue a warrant authorizing an employee of the Commission named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for entry

(6) If a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that an employee of the Commission may carry out his or her duties under this Act, the justice of the peace may issue a warrant authorizing such entry by the employee named in the warrant.

Execution and expiry

(7) A warrant issued under this section,

(a) shall specify the hours and days during which it may be executed; and

(b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Admissibility of copies

(8) Copies of, or extracts from, documents and things removed from premises in the course of an audit and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Settlement with Commission

23.-(1) If the Commission is of the opinion that an employer may not be complying with Part III, the Commission may endeavour to effect a settlement with the employer that will ensure compliance.

Written agreement

(2) The Commission and the employer shall embody the terms of any settlement in a written agreement.

Commission order to comply

24.-(1) The Commission may, without a hearing, order an employer to take the specified steps to achieve compliance with Part III if it considers that any of the following circumstances exist:

1. The employer has not conducted a workforce survey or collected other information in accordance with section 9.

2. The employer has not completed a review of the employer's employment policies and practices in accordance with section 10.

3. The employer's employment equity plan does not comply with section 11.

4. The employer has not filed a certificate or a copy of an employment equity plan with the Commission in accordance with section 11 or 13, as the case may be.

5. The employer has not consulted with the employer's employees in accordance with section 15.

6. The employer has not established or maintained employment equity records in accordance with section 17.

7. The employer has not submitted a report or other information to the Commission in accordance with section 18.

Copy of order

(2) The Commission shall mail a copy of the order to the employer. The order is deemed to have been received on the fifth day after the date of mailing.

Appeal to Tribunal

(3) The employer may appeal the order to the Employment Equity Tribunal within thirty-five days after the Commission mails it.

Powers of Tribunal

(4) The Tribunal may, by order, rescind, vary or confirm the order of the Commission.

Effect of no appeal

(5) If the employer does not appeal an order in accordance with subsection (3), the order is deemed to be an order of the Tribunal.

Applications to the Tribunal

Application by Commission

25.-(1) The Employment Equity Commission may apply to the Employment Equity Tribunal for a determination of whether an employer has complied with Part III.

Deemed non-compliance

(2) In an application by the Commission, the employer is deemed not to have complied with Part III if the employer has failed to take steps required by the employer's employment equity plan or failed to achieve the goals set out in the plan in accordance with the timetables set out in the plan unless the employer proves that,

(a) the employer's employment equity plan complies with Part III; and

(b) the employer made all reasonable efforts to implement the plan and to achieve the goals set out in the plan in accordance with the timetables set out in the plan.

Application for failure to implement plan or settlement

26.-(1) Any person other than the Commission may apply to the Tribunal on any of the following grounds:

1. An employer has failed to take steps required by the employer's employment equity plan.

2. An employer has failed to achieve the goals set out in the employer's employment equity plan in accordance with the timetables set out in the plan.

3. An employer has failed to implement a settlement referred to in subsection 23(2) or 31(2).

Defence

(2) If the application alleges a failure to achieve the goals set out in the employment equity plan in accordance with the timetables in the plan, the Tribunal shall not make an order if the employer proves that,

(a) the employer's employment equity plan complies with Part III; and

(b) the employer made all reasonable efforts to implement the plan and to achieve the goals set out in the plan in accordance with the timetables set out in the plan.

Applications re joint responsibilities

27.-(1) If the employer and the bargaining agent have not resolved any matter that is their joint responsibility, either of them may apply to the Tribunal at any time to determine the matter.

Mandatory application

(2) The employer shall promptly apply to the Tribunal if the employer and the bargaining agent have not carried out their joint responsibilities within the time required under Part III.

Entitlement continues

(3) Failure of the employer to comply with subsection (2) does not prevent the bargaining agent from making an application under subsection (1).

Order

(4) The Tribunal may make any order it considers just in respect of the part of the employer's workforce in which employees are represented by the bargaining agent.

Application by employee re joint responsibilities

28.-(1) An employee of an employer may apply to the Tribunal on either of the following grounds:

1. The employer and a bargaining agent are not carrying out their joint responsibilities in good faith.

2. The employer has not applied to the Tribunal when required to do so under subsection 27(2).

Order

(2) The Tribunal may make any order it considers just, including an order removing or modifying a term in the employment equity plan that, in the opinion of the Tribunal, was not included in good faith.

Application re intimidation, etc.

29.-(1) A person may apply to the Tribunal on the grounds that another person has intimidated, coerced, penalized or discriminated against the applicant contrary to section 37 (intimidation).

Orders

(2) The Tribunal may make any order it considers just, including any of the following orders:

1. An order requiring the person who contravened section 37 to pay an amount specified in the order to the applicant as compensation.

2. An order requiring the person who contravened that section to take steps specified in the order to remedy the effects of the contravention, including,

   i. rehiring the applicant, if he or she was dismissed from employment, or

   ii. rescinding any penalty imposed on the applicant.

3. An order requiring the person who contravened that section to take steps specified in the order to prevent further contraventions.

Notice to Commission

30.-(1) The Tribunal shall notify the Employment Equity Commission of any application under this Part, other than an application under section 25 (application by Commission) or 29 (application re intimidation, etc.).

Commission audit

(2) The Commission shall advise the Tribunal if it is conducting an audit of an employer that is a party to the application.

Effect on Tribunal proceeding

(3) If the Commission advises the Tribunal that it is auditing an employer, the Tribunal shall not take any further step in the application, other than a step authorized by the regulations, until at least thirty days after it notified the Commission of the application.

Report on audit

(4) The Commission may submit a report to the Tribunal on the audit and, if it does, the report shall be filed in evidence at any hearing held by the Tribunal in the application.

Mediation

31.-(1) The Employment Equity Tribunal shall refer every application under this Part to one of its employees who may endeavour to effect a settlement between the parties to the application.

Settlement

(2) If the parties agree on a settlement, it shall be embodied in a written agreement or, with their consent, may be embodied in an order of the Tribunal made without a hearing.

Hearing

(3) If the employee considers that mediation or further efforts at mediation are not a practical means of resolving the application, the Tribunal shall hold a hearing and determine the application unless the regulations provide otherwise.

Parties

32.-(1) The parties to an application under this Part are the applicant, the interested employer, the interested bargaining agent, if any, and such other persons as the Tribunal may specify.

Commission

(2) The Commission is entitled, at its request, to be a party to any application.

Power to make orders

33.-(1) In any application under this Part, the Tribunal may make such orders as it considers just, including any of the following:

1. An order establishing an employment equity plan.

2. An order amending an employment equity plan.

3. An order requiring an employer to create an employment equity fund to be used for the purposes and in the manner specified in the order.

4. An order appointing an administrator who, at the expense of the employer, is responsible for developing, implementing, reviewing and revising the employer's employment equity plan.

Conditions
(2) An order may be made subject to such conditions as the Tribunal considers just.

Reconsideration
(3) The Tribunal may, if it considers it advisable to do so, reconsider any decision or order and vary or revoke it.

Exclusive jurisdiction
34.-(1) The Tribunal has exclusive jurisdiction to hear and determine any proceeding before it and to determine all questions of law or fact that arise in a proceeding.

Decision, etc., final
(2) A decision or an order of the Tribunal is final and conclusive for all purposes.

Offences

Confidentiality of information
35. A person in possession of information collected from employees under Part III shall keep the information confidential and shall not disclose or use it except for the purpose of complying with Part III or IV.

Obstruction
36.-(1) No person shall hinder, obstruct or interfere with an employee of the Employment Equity Commission in the execution of a warrant or otherwise impede an employee in the course of an audit.

Exception
(2) Subsection (1) is not contravened if a person refuses to produce documents or things unless a warrant has been issued under subsection 22(5).

Intimidation
37. No person shall intimidate, coerce, penalize or discriminate against another person because that person,

(a) is exercising or may exercise a right under this Act;

(b) is participating or may participate in a proceeding under this Act;

(c) has made or may make a disclosure required in a proceeding under this Act;

(d) has acted or may act in compliance with this Act or an order made under it or has sought or may seek the enforcement of this Act or an order.

Offences and penalty

38. Every person who contravenes or fails to comply with section 35, 36 or 37 or an order of the Employment Equity Tribunal is guilty of an offence and on conviction is liable to a fine of not more than $50,000.

Consent to prosecution

39. No prosecution for an offence under section 38 shall be instituted except with the consent in writing of the Tribunal.

PART V
ADMINISTRATION

Employment Equity Commission

Commission established

40.-(1) A commission is established to be known in English as the Employment Equity Commission and in French as Commission de l'équité en matière d'emploi.

Composition

(2) The Commission is composed of one or more members to be appointed by the Lieutenant Governor in Council.

Employment Equity Commissioner

(3) One member shall be designated by the Lieutenant Governor in Council as the Employment Equity Commissioner.

Employees

(4) Such employees as are necessary for the proper conduct of the Commission's work may be appointed under the Public Service Act.

Delegation

(5) The Commission may delegate any powers or duties to its employees.

Functions of the Commission

41.-(1) The Employment Equity Commission has the following functions:

1. To further the principles of employment equity.

2. To monitor the implementation of employment equity and the effectiveness of this Act.

3. To conduct research and develop policy in relation to employment equity.

4. To assist employers, employees and bargaining agents in complying with Part III.

5. To work with employers and bargaining agents to ensure that existing seniority systems will not be a barrier to employment equity.

6. To educate the public about employment equity.

7. To carry out any function assigned to the Commission under this or any other Act.

Public consultations

(2) The Commission may engage in public consultations which may include public hearings.

Policy directives

42.-(1) The Commission may issue policy directives on matters related to employment equity.

When effective

(2) A policy directive takes effect on the day it is published in The Ontario Gazette.

Effect of directive

(3) The Employment Equity Tribunal shall consider the Commission's policy directives in making decisions.

Commission rules

43. The Commission may make rules for the conduct and management of its affairs and for the practice and procedure to be observed in relation to matters it deals with.

Annual report

44.-(1) Each year the Employment Equity Commissioner shall make an annual report to the Minister of Citizenship on the activities and affairs of the Commission. The Minister shall table the report before the Assembly if it is in session or, if not, at the next session.

When due

(2) Each annual report is due on or before the 31st day of March.

First annual report
(3) The first annual report is not due until the second anniversary of the 31st day of March following the coming into force of this section.

Advisory councils
45.-(1) The Minister of Citizenship may appoint one or more advisory councils to advise the Commission.

Provincial or regional
(2) An advisory council may be appointed for the province as a whole or for a region of the province.

Minimum representation
(3) An advisory council must include a representative of employers, a representative of labour and a representative of the designated groups.

Employment Equity Tribunal

Tribunal established
46.-(1) A tribunal is established to be known in English as the Employment Equity Tribunal and in French as Tribunal de l'équité en matière d'emploi.

Composition
(2) The Tribunal is composed of such members as are appointed by the Lieutenant Governor in Council.

Chair
(3) One member shall be designated by the Lieutenant Governor in Council as the chair.

Vice-chairs
(4) The Lieutenant Governor in Council may designate one or more members as vice-chair.

Employees
(5) Such employees as are necessary for the proper conduct of the Tribunal's work may be appointed under the Public Service Act.

Panels of the Tribunal
47.-(1) The chair may appoint panels composed of one or more members of the Tribunal to conduct hearings.

Presiding officer
(2) The chair shall designate one member of each panel to preside over hearings of the panel.

13. prescribing information in respect of this Act and employment equity that must be posted in a workplace;

14. governing the establishment and maintenance of employment equity records in respect of an employer's employees;

15. governing reports, certificates and other information to be submitted to the Employment Equity Commission on the composition of an employer's workforce or the development, implementation, review or revision of the employer's employment equity plans;

16. prescribing steps that may be taken by the Employment Equity Tribunal under subsection 30(3);

17. prescribing, for the purpose of subsection 31(3), circumstances in which the Tribunal is not required to hold a hearing and determine an application, and governing the procedure for determining whether the circumstances exist.

Numerical goals in plans

(2) A regulation governing the content of employment equity plans may require plans to contain numerical goals determined in a manner prescribed by the regulation. It may provide that the goals shall be determined with reference to percentages approved by the Commission that, in the opinion of the Commission, fairly reflect the representation of the designated groups in the population of a geographical area or in any other group of people.

General or specific

(3) Regulations may be general or specific in nature.

Conditions

(4) A regulation may be made subject to such conditions as are set out in the regulation.

PART VII
CONSEQUENTIAL AMENDMENTS, REVIEW, COMMENCEMENT AND SHORT TITLE

51.-(1) Section 14 of the Human Rights Code is amended by adding the following subsection:

Employment equity plan

(6) An employment equity plan under the Employment Equity Act, 1992 shall be deemed to be a special program that satisfies the requirements of subsection (1),

(a) if the Employment Equity Tribunal has determined that the plan complies with Part III of the Employment Equity Act, 1992; or

(b) if the Employment Equity Commission certifies in writing that the plan complies with Part III of that Act.

(2) Subsection 33(1) of the Act is amended by striking out "section 34" in the first line and substituting "sections 34 and 34.1".

(3) The Act is amended by adding the following section:

Employment equity plan

34.1-(1) If a complaint is made against an employer that has an employment equity plan under the Employment Equity Act, 1992 and it appears to the Commission that the complaint arises from a practice that is addressed in the employment equity plan, the Commission shall refer the complaint to the Employment Equity Commission.

Criteria for no further action

(2) The Employment Equity Commission shall inquire into the complaint and shall direct that no further action be taken on the complaint if it is satisfied that,

(a) the complaint arises from a practice that is addressed in the employer's employment equity plan;

(b) the employment equity plan complies with Part III of the Employment Equity Act, 1992;

(c) the employment equity plan addresses the practice in a reasonable manner and over a reasonable period of time; and

(d) the employer is making all reasonable efforts to implement the employment equity plan and to achieve the goals set out in the plan in accordance with the timetables set out in the plan.

Resumption of investigation

(3) If the Employment Equity Commission does not make a direction under subsection (2), it shall promptly refer the complaint back to the Human Rights Commission and the Human Rights Commission shall resume its investigation of the complaint and its efforts to effect a settlement.

1. governing what constitutes membership in a designated group;

2. naming or describing employers in addition to those named in the Schedule to the Pay Equity Act as employers in the broader public sector;

3. excluding employers by name or description from the broader public sector;

4. designating persons as employees for the purpose of this Act;

5. governing and adapting the application of this Act,

   i. as it applies to the construction industry,

   ii. as it applies in situations where people are hired through union hiring halls,

   iii. as it applies to particular industries or sectors of the economy which in the opinion of the Lieutenant Governor in Council cannot be properly accommodated through the provisions of this Act because of unique situations in the industry or sector;

6. governing employment equity workforce surveys and the collection of other information to determine the extent to which members of the designated groups are employed in an employer's workforce;

7. governing reviews of an employer's employment policies and practices;

8. governing the content of employment equity plans;

9. governing the development, implementation, review and revision of employment equity plans;

10. governing the manner in which an employer and a bargaining agent shall jointly carry out responsibilities under Part III;

11. prescribing information that an employer must provide to a bargaining agent;

12. governing consultation by employers with their employees on the development, implementation, review and revision of employment equity plans;

Decision
(3) A decision of a panel is a decision of the Tribunal.

Same
(4) If a panel has more than one member, the panel's decision is the decision of the majority of the members or, if there is no majority decision, the decision of the person designated to preside.

Tribunal rules
48. The Tribunal may make rules for the conduct and management of its affairs and for the practice and procedure to be observed in proceedings before it.

PART VI
MISCELLANEOUS AND REGULATIONS

Employment equity: government contracts
49.-(1) It is a condition of every contract entered into by or on behalf of the Crown or an agency of the Crown that every other party to the contract shall comply with Part III to the extent that the party has obligations under that Part.

Subcontracts
(2) Subsection (1) also applies with respect to subcontracts entered into in the performance of a contract described in subsection (1).

Employment equity: government grants, etc.
(3) It is a condition of every grant, contribution or loan made by or on behalf of the Crown or an agency of the Crown that the person to whom the grant, contribution or loan is made comply with Part III to the extent that the party has obligations under that Part.

Proof of breach
(4) A finding by the Employment Equity Tribunal that Part III has been breached is conclusive proof of a breach of the condition.

Effect of breach of condition
(5) The breach is sufficient grounds for the cancellation of the contract, subcontract, grant, contribution or loan and for the refusal to enter into any further contract with or to make any further grant, contribution or loan to the same person.

Regulations
50.-(1) The Lieutenant Governor in Council may make regulations,

Review of the Act

52. A standing or select committee of the Legislative Assembly shall, on or before the day that is five years after the day this section comes into force, undertake a comprehensive review of this Act and the regulations and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this Act and the regulations.

Commencement

53. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

54. The short title of this Act is the Employment Equity Act, 1992.